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U.S. Citizenship
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Services

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FILE:

[WAC-03-254-54568]

OFFICE: California Service Center

DATE:

JUN 30 2006

IN RE:

Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to register for TPS in a timely manner.

The appeal from the director's decision was rejected on June 15, 2005, after the Director of the AAO also concluded that the applicant had failed to register for TPS in a timely manner. On motion to reopen, the applicant admits that he was arrested on two occasions. However, he claims that he has not committed any other mistake since then and that he has been in complete compliance with the law.

A motion to reopen or reconsider must be filed within thirty days of the underlying decision, except that failure to file during this period may be excused at the Service's discretion when the applicant has demonstrated that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i).

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The previous decision from the AAO was dated June 15, 2005. Any motion to reopen must have been filed within thirty days after service of the decision. 8 C.F.R. § 103.5(a)(1)(i). Coupled with three days for mailing, the motion, in this case, should have been filed on or before July 18, 2005. The motion to reopen was received on July 29, 2005.

It is further noted that the applicant, on motion, furnished copies of the following court dispositions:

- (1) Convicted on September 19, 2000 of driving under the influence, a misdemeanor.
- (2) Convicted on May 2, 2001 of driving with a suspended/revoked license, a misdemeanor.

These convictions shall be addressed in any further immigration proceedings.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the motion to reopen was not filed within the allotted time period. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated June 15, 2005, is affirmed.